SINGAPORE REPORTS

SIM MIN TECK v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Lai Kew Chai & Rajah JJ.) February 24, 1987]

[Singapore – Criminal Appeal No. 6 of 1985]

Penal Code, ss. 34 & 300 – Murder – Common intention.

Criminal Law – Murder – Whether properly convicted.

Constitutional Law – Different offences – Murder and culpable homicide not amounting to murder – Allegation of discrimination – Whether appellant was unfairly discriminated – Constitution of Singapore, arts. 12(1) & 35(8).

The appellant was convicted on two charges namely that he with two other persons (Beh and Chng) in furtherance of a common intention committed murder by causing the deaths of two persons. He was sentenced to death. He appealed. On appeal, it was contended that (a) the trial judges should have totally disregarded Beh's evidence as they had found that his evidence had been successfully impeached and that as the case against the appellant rested solely on the evidence of Beh, an accomplice, there was no evidence to support the convictions; (b) as Beh had been charged and convicted on a plea of guilty of the lesser offence of culpable homicide not amounting to murder, the appellant's conviction on the charge involving common intention was wrong in law; (c) as Beh had been charged on the same facts with the lesser offence, the appellant had been discriminated against contrary to Article 12(1) of the Constitution of Singapore.

Held, dismissing the appeal: (1) the unchallenged and undisputed evidence was that both deceased were fatally stabbed with knives in circumstances which amounted to murder by one or more of them and that the stab wounds were inflicted in furtherance of their common intention to commit armed robbery and if necessary to use the knives they were armed with;

(2) the contention that Beh's conviction on the lesser offence made the appellant's conviction wrong in law was without substance and contrary to long established authorities;

(3) the third submission was also rejected because it is the Attorney-General of Singapore who is given power by Article 35(8) of the Constitution, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

Case referred to:

(1) *Teh Cheng Poh* v. *Public Prosecutor* [1979] 1 M.L.J. 50.

COURT OF CRIMINAL APPEAL.

Edwin Chan for the appellant.

Sowaran Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court): The appellant, Sim Min Teck, was convicted by the High Court on two charges that he on November 2, 1980 at about 8.50 a.m. at Block 35, Unit 201, Fishery Port Road, the office of M/s Siang Huat Fish Agent, with Beh Meng Chai and Chng Meng Joo, also known as Sam Mau @ Ah Joo, in furtherance of a common intention committed murder by causing the deaths of Lee Cheng Tiong and Teo Keng Siang. He was sentenced to death. His appeal against both convictions was dismissed by us. We now give our reasons.

The facts of the case can be briefly stated. The appellant met Beh Meng Chai ("Beh") and Chng Meng Joo ("Chng") on November 1, 1980. The appellant and Chng planned to commit robbery and invited Beh to join them. The three of them met on the following morning and boarded a bus and went to a fish market in Jurong. Two of them, namely, the appellant and Chng, were then each armed with a knife and they went to Block 35, Unit 201, Fishery Port Road, which is the office of M/s Siang Huat Fish Agent. They entered the premises, and while Beh waited at the outer office, the appellant and Chng entered the inner office where they found the proprietor, Lee Cheng Tiong ("Lee"). They confronted Lee but the latter put up a fight, in the course of which he was stabbed and killed.

After Lee was killed, the appellant took the deceased's money in the inner office, and Beh and Chng then removed the gold chain from the deceased's neck. When they were about to leave the premises, a youth, Teo Keng Siang ("Teo") came in. Teo at that time was working for Mui Tong Fish Agent whose premises, Unit 209, were on the same floor, a few doors way from Lee's office. He was sent there by his employer to change money with Lee. Teo was told by one or two of them that Lee was not in, but he insisted that he was in and went into the inner office. Upon entry, he discovered that Lee had been killed. Teo was subsequently also stabbed and killed by one or more of the three namely: the appellant, Beh and Chng and some money in his possession was taken.

Professor Chao Tzee Cheng, the Senior Forensic Pathologist, carried out autopsies on the bodies of Lee and Teo and submitted his autopsy reports. He found nine stab wounds in Lee, of which two were fatal, namely: one was a combination of two stab wounds just above the right nipple caused by a knife which cut the second costal cartilage and penetrated the chest downwards and inwards to

a depth of 10 cm and penetrated the lower part of the right upper lobe of the lung and cut the right pulmonary vein, and the other was a wound slightly to the right of the left nipple of the deceased also caused by a knife which entered the chest horizontally and inward to a depth of 8 cm cutting the left fourth costal cartilage and cutting the interior wall of the left ventricle of the heart 1 cm in length. Both these injuries, Professor Chao said, were sufficient in the ordinary course of nature to cause death and death must have occurred within minutes. Professor Chao found four stab wounds that were inflicted on Teo, one of which was fatal. This fatal wound was caused by a knife which cut the right second costal cartilage and entered Teo's chest in a downward and inward direction to a depth of 5 cm, penetrating the lower part of the right upper lobe of the lung. This injury, according to Professor Chao, was sufficient in the ordinary course of nature to cause death and death also must have occurred within minutes.

The defence of the appellant was that he did not inflict the fatal injuries on Lee and he did not kill Teo. He admitted that he went with Beh and Chng to Siang Huat Fish Agent to commit robbery. According to the appellant, when they entered the premises, Chng took out three knives and gave one to him, one to Beh and he kept one himself, and when he and Chng entered the inner office, Chng rushed at Lee and fought with Lee. It was Chng who stabbed Lee a few times and the appellant was trying to separate them, and in so doing, Lee, who had managed to seize the knife from Chng and who had stabbed Chng, swung the knife at him and he dodged and stabbed Lee on the back near the waist. Immediately thereafter, Lee fell. The appellant said he had to stab Lee because the latter swung the knife at him. He also denied he killed Teo. He said that when they were about to leave the premises, Teo arrived and insisted that Lee was in and then went into the inner office. He followed Teo into the inner office, and on discovering that Lee was killed Teo shouted and said he wished to report. He then tried to snatch the knife from the appellant who took fright and stabbed Teo once at his left waist. Having done that, he then went out and asked Beh and Chng to get a rope to tie up Teo. Instead they rushed into the inner office and stabbed Teo with their knives and killed him.

The trial judges rejected the defence of the appellant that he stabbed Lee after Lee had swung at him with a knife. They accepted the evidence of Beh, whom they considered an accomplice whose evidence had to be treated with caution, that he saw from his position in the outer office a fight between Lee and the appellant and Chng. Beh also said that when he entered the inner office he saw Chng standing behind Lee and saw Lee stabbing Chng from over his shoulder. Beh caught hold of Lee's right hand and soon after when he released it Lee fell against Chng's body. The trial judges on Beh's evidence found that Lee's injuries were inflicted by the appellant and Chng during the course of the fight. The trial judges also rejected the defence of the appellant that he stabbed Teo only once on his left waist because of fright and they found that the appellant killed Teo to facilitate his get-away after the robbery.

At the hearing of the appeal it was submitted on behalf of the appellant that the trial judges should have totally disregarded Beh's evidence as they had found that his evidence had been successfully impeached and that as the case against the appellant rested solely on the evidence of Beh, an accomplice, there was no evidence to support the convictions. We rejected the submissions. The evidence was overwhelming that the appellant, Chng and Beh entered the Unit, each armed with a knife, to commit robbery and intending, if necessary, to use them if any resistance was offered by any person in that Unit. The unchallenged and undisputed evidence was that both deceased were fatally stabbed with knives in circumstances which amounted to murder by one or more of them and that the stab wounds were inflicted in furtherance of their common intention to commit armed robbery and if necessary to use the knives they were armed with.

Another submission advanced on behalf of the appellant was that as Beh had been charged and convicted on a plea of guilty of the lesser offence of culpable homicide not amounting to murder the appellant's conviction for murder was wrong in law. The argument, as we understood it, was that the offence that was committed in furtherance of the common intention of the appellant, Chng and Beh could not amount to the offence of murder because Beh had only been charged and convicted of the offence of culpable homicide not amounting to murder. We rejected that contention as without any substance and contrary to long established authorities.

Lastly, it was contended on behalf of the appellant that because Beh had been charged on the same facts with the lesser offence, the appel-

lant had been discriminated against contrary to Article 12(1) of the Constitution of Singapore which states that "All persons are equal before the law and entitled to the equal protection of the law." We rejected this contention. The Attorney-General of Singapore is by Article 35(8) of the Constitution given power, exercisable at his discretion to institute, conduct or discontinue any proceedings for any offence. As was said by Lord Diplock when delivering the judgment of the Privy Council in *Teh Cheng Poh* v. *Public Prosecutor*[1] at page 56 of the discretion exercisable by the Attorney-General of Malaysia under Article 145(3) of the Malaysian Constitution which is *in pari materia* with our Article 35(8):

"There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each of them may vary enormously between one case and another. All that equality before the law requires, is that the cases of all potential defendants to criminal charges shall be given unbiassed consideration by the prosecuting authority and that decisions whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration."

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Lee Chan & Partners.*

GOLD COIN LIMITED v. TAY KIM WEE

[C.A. (Lai Kew Chai, Chua & Thean JJ.)
March 4, 1986]

[Singapore – Civil Appeal No. 62 of 1984]

Contract – Quantum meruit – Nature of quantum meruit claims.

Contract – Term in letter of appointment – Whether term has been varied impliedly.

Employment – Contract – Term in letter of appointment – Payment of commission – Whether term has been varied.

The respondent Tay Kim Wee took up employment with the employers, the appellants, with effect from August 1, 1959. The conditions of service were all spelt out in a letter of July 29, 1959, from the employers to the respondent. One of the terms providing for the payment of commission was as follows:

> *"Commission:* After the development of sales of Equipment and Chicks, a certain amount of Commission will be given from the profits."

When the respondent entered the service of the appellants on the terms set out in the letter, the poultry project contemplated under the paragraph headed by the word "Commission" was then under study. The sale of animal feed was one of the principal activities of the appellants. He headed and throughout his employment remained responsible for the sale of animal feed.

By 1965, the poultry project in the form of hatchery for chicks and the sale of day-old chicks came into fruition. It involved the import of parent breeders from the United States of America, raising them in Singapore, producing hatching eggs, hatching them and selling the day-old chicks to poultry farmers in the rural areas of Singapore and Malaysia. The respondent was appointed concurrently as the Manager of the Hatchery Division. The Hatchery Division of the appellants performed well and on the evidence it was undisputed that the respondent's contribution to its success was singular and significant. He was exceptionally devoted to his work.

Although the Hatchery Division returned handsome profits, the respondent did not before his resignation from the appellants claim his commission; nor did he provide for such claims when he was preparing some of the budgets for the appellants. Not unexpectedly the financial accounts of the appellants relating to the years in question were prepared on the basis that no such commission was payable.

The respondent on April 25, 1981, tendered to his employers his letter of resignation, ending his employment on July 31, 1981. By a letter of June 4, 1981, the respondent for the first time claimed commission in accordance with the terms of his letter of appointment. The appellants declined to entertain the claim.

The respondent claimed a total sum of $162,369.10 from the appellants on the basis of the number of chicks sold for the period from 1975 to 1981 *ex* hatchery or direct at 2 cents per chick commission. Not receiving payment, the respondent commenced proceedings in the High Court on August 12, 1981. In the High Court, he obtained judgment in the sum of $80,000 on a *quantum meruit* as recompense for services rendered over a period of six years ending with the date of the filing of the writ of summons herein on August 12, 1981, and interest thereon which the learned judge in his discretion fixed at a lump sum of $20,000 in respect of the same period of six years. The appellants appealed against the said judgment.

Held: (1) the claim to a *quantum meruit* in the present case was contractual in nature. The implied promise to pay a reasonable commission, as found by the learned judge, is and should properly be treated in the same way as other implied terms in the law of contract. The court was satisfied that the learned judge had properly applied the principles adumbrated in *Way* v. *Latilla*[1];